

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**STEVEN RODRIGUEZ,**

**Plaintiff,**

**v.**

**9:10-CV-88  
(FJS/DRH)**

**DONNIE MITCHELL, Correction Officer, Clinton  
Correctional Facility; GILLETTE, Correction  
Officer, Clinton Correctional Facility;<sup>1</sup> SGT.  
GRIMSHAW, Correction Officer, Clinton  
Correctional Facility; and BAXTER, Correction  
Officer, Clinton Correctional Facility, officially and  
in their individual capacities,**

**Defendants.**

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**APPEARANCES**

**OF COUNSEL**

**STEVEN RODRIGUEZ  
07-A-5946**

Sullivan Correctional Facility  
Post Office Box 116  
Fallsburg, New York 12733  
Plaintiff *pro se*

**OFFICE OF THE NEW YORK  
STATE ATTORNEY GENERAL**

The Capitol  
Albany, New York  
Attorneys for Defendants

**MEGAN M. BROWN, AAG**

**SCULLIN, Senior Judge**

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<sup>1</sup> Defendant Gillette, who was misidentified and is actually B. Drollette, *see* Text Order dated February 2, 2011, was served on February 10, 2011, *see* Dkt. No. 53, and filed an answer on June 3, 2011, *see* Dkt. No. 57. Defendant Gillette has never requested to join in the present motion nor has he filed a motion on his own behalf.

## ORDER

Plaintiff commenced this action pursuant to 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights under the Eighth Amendment. *See generally* Dkt. No. 1. Defendants Mitchell, Grimshaw and Baxter filed a motion for summary judgment on January 7, 2010. *See* Dkt. No. 48. Plaintiff did not oppose that motion. On July 28, 2011, Magistrate Judge Homer issued a Report-Recommendation and Order, in which he recommended that this Court grant Defendants' motion. *See* Dkt. No. 58 at 12. None of the parties filed any objections to this Report-Recommendation and Order.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, \*10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting that review, "the Court may 'accept, reject, or modify, in whole or in part, the recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Homer's July 28, 2011 Report-Recommendation and Order for clear error and manifest injustice; and, finding none, the Court hereby

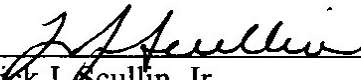
**ORDERS** that Magistrate Judge Homer's July 28, 2011 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

**ORDERS** that the summary judgment motion of Defendants Mitchell, Grimshaw and Baxter is **GRANTED**; and the Court further

**ORDERS** that this case is remanded to Magistrate Judge Homer for all further pretrial matters.<sup>2</sup>

**IT IS SO ORDERED.**

Dated: September 12, 2011  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge

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<sup>2</sup> As a result of this Order, the only remaining claims in this action are Plaintiff's claims against Defendant Gillette (B. Drollette).